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7 as acquirer of certain assets and liabilities of  
Washington Mutual Bank from the Federal Deposit  
Insurance Corporation acting as receiver, and  
8 California Reconveyance Company

9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 George M Walker and Diane W. Walker,  
12 husband and wife,

13 Plaintiffs,  
14 v.

15 Washington Mutual Bank, F.A.; JPMorgan  
16 Chase Bank N.A.; California Reconveyance  
Company; Security Title Agency,

17 Defendants.

No. CV11-0584-PHX-SRB

**REPLY IN SUPPORT OF  
MOTION TO DISMISS  
PLAINTIFFS' COMPLAINT**

18 Defendants JPMorgan Chase Bank, N.A. ("Chase"), as acquirer of certain assets and  
19 liabilities of Washington Mutual Bank ("WaMu") from the Federal Deposit Insurance  
20 Corporation ("FDIC") acting as receiver, and California Reconveyance Company ("CRC") (the  
21 "Moving Defendants") respectfully submit this reply in support of their motion to dismiss. The  
22 reply is supported by the following memorandum of points and authorities, and the Court's  
23 record, which are incorporated herein.

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                 Although Plaintiffs deny that they are asserting a “show me the note” case, the  
3 allegations of their Complaint indicate otherwise. Even in their response, Plaintiffs continue  
4 to complain that there “is not sufficient proof that [Chase] acquired the specific loan subject  
5 to this litigation.” Response, at 3. And, “Defendants herein failed to produce the contract, the  
6 Note, or the Deed upon which they assert their right to foreclose.” Response, at 5.  
7 “Defendants’ [sic] attempt to foreclose without providing any admissible evidence that would  
8 entitle them to foreclose.” Response, at 7. “None of the defendants had presented any  
9 admissible evidence to prove their standing.” Response, at 8. They repeat this type of  
10 assertion often enough that it should be apparent that they seek that to which they are not  
11 entitled: showing of the note.

12           **I.      The Motion to Dismiss Standard**

13                 Plaintiffs do not dispute the standards properly set forth in the Motion to Dismiss.

14           **II.     The Complaint Violates Basic Pleading Rules.**

15                 Although Plaintiffs dispute that their Complaint is defective, they do not explain how  
16 they believe it satisfies Rules 8 or 10. For purposes of this Motion to Dismiss, however, the  
17 lack of compliance with these rules is not what causes their Complaint to fail to state a claim  
18 upon which relief can be granted. That shortcoming is a substantive failure for which Plaintiffs  
19 do not offer any cure.

20           **III.    WaMu Receivership May Preclude Claims.**

21                 For clarification, WaMu is not appearing in this action through undersigned counsel.  
22 In fact, WaMu cannot be sued at all until Plaintiffs exhaust certain administrative remedies, and  
23 then it can only be sued in certain jurisdictions, and Arizona is not one of them. *See* Motion  
24 to Dismiss, at 3-6.

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1     **IV. “Show Me The Note” Theory Does Not State a Claim.**

2                 To the extent Plaintiffs’ Complaint does depend on any “show me the note” theory or  
 3 derivative thereof, it should be dismissed. Plaintiffs do not persuasively challenge this  
 4 proposition.

5     **V. RESPA and FDCPA Do Not Provide a Basis for Recovery.**

6                 Plaintiffs do not articulate any viable claim under federal law. They devote significant  
 7 space to discussing 16 C.F.R. § 433.2, but that regulation does not apply to the note or deed  
 8 of trust involved in this case.

9                 Perhaps to bolster a type of assignee liability theory, the SAC  
 10 refers to the Federal Trade Commission (“FTC”) Holder Rule, 16  
 11 C.F.R. § 433.2. *See SAC ¶ 32.* Under the Holder Rule “a  
 12 consumer-debtor may assert against a creditor-assignee of a  
 13 consumer credit contract any and all affirmative claims for  
 14 recovery, as well as defenses, that the consumer-debtor would be  
 15 entitled to assert against the seller had the contract not been  
 16 assigned.” *State ex rel. Stenberg v. Consumer’s Choice Foods,*  
*Inc.*, 276 Neb. 481, 755 N.W.2d 583, 589 (Neb. 2008) (quoting  
*Beemus v. Interstate Nat'l Dealer Servs.*, 2003 PA Super 177, 823  
 A.2d 979, 986 (Pa. Super. 2003)). ***The FTC Holder Rule,  
 however, does not apply to mortgage loans.***

17                 *Araki v. Bank of Am.*, 2010 U.S. Dist. LEXIS 140652 (D. Haw. 2010)(emphasis added).  
 18 Additionally, the Fair Debt Collection Practices Act simply does not apply here for the reasons  
 19 given in the Motion to Dismiss.

20     **VI. Fraud**

21                 Plaintiffs do nothing to rehabilitate their various fraud claims, including concealment  
 22 and misrepresentation. Their claims seem focused on what they characterize as the  
 23 “fraudulent conversion of their property” (Complaint, at 13), and concealment as to the role  
 24 of various entities. But whether it is viewed common law fraud or statutory consumer fraud,  
 25 Plaintiffs have stated no viable claim.

## VII. Quiet Title

In addition to being unable to meet the statutory requirements to plead this cause of action, there is a more fundamental failing, which Plaintiffs do not dispute. They have not and cannot allege that they have paid off their loan. As a matter of law, therefore, quiet title cannot be granted. *Salazar v. Lehman Bros. Bank*, 2010 U.S. Dist. LEXIS 108737 \*17 (D. Ariz. 2010).

## VIII. Conclusion

There is no viable legal claim stated here. To the extent Plaintiffs challenge the involvement of Security Title Agency, those claims are not addressed herein because they are not relevant to the Moving Defendants. Moreover, Plaintiffs have now stipulated to dismiss Security Title Agency from the case. Under all the circumstances, Chase and CRC request that the Court dismiss the Complaint, with prejudice.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of May, 2011.

**MAYNARD CRONIN ERICKSON  
CURRAN & REITER, P.L.C.**

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Reconveyance Company

**ORIGINAL** of the foregoing e-filed this 17<sup>th</sup> day of May, 2011, with:

Clerk of the Court  
United States District Court  
401 W. Washington St.  
Phoenix, AZ 85003

1      **COPY** of the foregoing delivered via ECF this 17<sup>th</sup> day of May, 2011, to:

2      Honorable Susan R. Bolton  
3      United States District Court  
4      401 W. Washington St.  
5      Phoenix, AZ 85003

6      **COPY** of the foregoing mailed this 17<sup>th</sup> day of May, 2011, to:

7      George and Diane Walker  
8      3964 E. Expedition Way  
9      Phoenix, AZ 85050  
10     Plaintiffs pro se

11     By /s/Stacey Tanner

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